IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

OP.No. 19088 of 2001(S)

{O.A.NO.1689/1998OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH}
.....

PETITIONERS:
---

1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY,
MINISTRY OF COMMUNICATIONS,
DEPARTMENT OF POSTS, NEW DELHI.

2. THE DIRECTOR GENERAL (POSTS),
DEPARTMENT OF POSTS,
MINISTRY OF COMMUNICATIONS,
NEW DELHI.

3. THE CHIEF POST MASTER GENERAL,
KERALA CIRCLE, TRIVANDRUM.

4. THE SUPERINTENDENT,
RAILWAY MAIL SERVICE (RMS),
'CT' DIVISION, CALICUT.

5. THE SENIOR SUPERINTENDENT OF POST OFFICES,
CALICUT DIVISION, CALICUT.

6. THE SUPERINTENDENT OF POST OFFICES,
TIRUR DIVISION, TIRUR.

7. THE SUPERINTENDENT OF POST OFFICES,
VADAKARA DIVISION, VADAKARA.

8. THE SUPERINTENDENT OF POST OFFICES,
TELLICHERRY DIVISION, TELLLICHERY.

9. THE SUPERINTENDENT OF POST OFFICES,
KASARGOD DIVISION, KASARGOD.

10. THE SENIOR SUPERINTENDENT OF POST OFFICES,
TRIVANDRUM RAILWAY MAIL SERVICE DIVISION,
TRIVANDRUM.

11. THE SUPERINTENDENT OF POST OFFICES,
OTTAPALAM DIVISION, OTTAPALAM.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG

RESPONDENTS:
---

1. CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH THROUGH REGISTRAR.

2. P.SIVARAMAKRISHNAN, S/O.P.KESAVAN,
PANAT HOUSE, P.O.TRIPRANGODE,
TIRUR, MALAPPURAM.

3. T.JISHA, D/O.T.GANGADHARAN,
"SREELAKSHMI", THEKKEMMURI,
TIRUR, MALAPPURAM.

4. V.K.JEEJA, D/O.V.K.SUDHAKARAN,
VELATH HOUSE, MUDUR P.O.,
VATTAMKULAM, MALAPPURAM.

5. T.A.AJITH, D/O.C.PARAMESWARAN NAIR,
ANJALI ATHAVIL HOUSE, MUDUR P.O.,
VATTAMKULAM, MALAPPURAM.

ADDITIONAL R6 TO R21 ARE IMPLEADED VIDE ORDER DT. 26.5.04 IN I.A.NO.5740/04.

ADDITIONAL RESPONDENTS 22 TO 37 ARE IMPLEADED AS PER ORDER DT. 24.8.04 IN I.A.NO.11300/04.

R6 TO R21 BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE O.A.NO.1689 OF 1998.

EXT.P2: TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A.1689 OF 1998.

EXT.P3: TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A.1689 OF 1998 DATED 17.4.2001.

RESPONDENTS' EXHIBITS: NIL

//true copy//

P.S. To Judge

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

O.P.No.19088 of 2001 S

Dated this the 5th day of December, 2006.

JUDGMENT

Abdul Gafoor, J.

Union of India is the petitioner. Union of India is aggrieved by Ext.P3 order, of the Central Administrative Tribunal, whereby the entire process of selection of Postal Assistants and Sorting Assistants notified in Exts.A1 and A2 produced before the tribunal, stands set aside.

2. The contention of the applicants before the tribunal was that, in order to root out several hands, the administration prepared a short list, which was per se illegal. Therefore, the entire selection process was initiated. The tribunal found that the short list was bad, at the

instance of the applicants. But a closer scrutiny of the facts reveals that, in spite of the short list, the applicants were found to be eligible and invited and were subjected to the process of selection including the written test and interview. They also participated in the written test and interview and were thus unfortunate and unsuccessful to get selected. It was at that point of time they approached the Central Administrative Tribunal assailing the selection process contending that the short listing was bad. May or may not be. But it is not a contention which could be heard from the mouth of the applicants, who after the preparation of the alleged short list, participated in the test and interview. The position is now clearly

covered by the decision reported in ***Siraj v. High Court of Kerala {2006(2) KLT 923}***. It has been held therein that:

> "The High Court also relied on ***P.K.Ramachandra Iyer's case {[1984] 2 SCC 141} and Umesh Chandra's case {[1985] 3 SCC 720}***. The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this court in paragraph 9 of ***Madan Lal & Ors. v. State of J & K & Ors {[1995] 3 SCC 486}*** as under:
>
> > "Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, we were found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage, there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitions (sick '***petitioners***') as well as the contesting respondents concerned. Thus, the

> petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have merged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Suppl. SCC 283, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protect (sick '***protest***') and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

3. On this short ground alone, the applicants before the tribunal were not entitled to get any relief. They have also not appeared before this court, in

spite of the challenge raised in this writ petition.

Accordingly, Ext.P3 is set aside. The writ petition is allowed and the original application before the tribunal stands dismissed.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

O.P.No.19088 of 2001 S

JUDGMENT

5th December, 2006.